

Remarks:

In the April 19, 2010, Office Action, the Examiner rejected Claims 1, 4, 10-17, 19-22, 24-28, and 33-38 under 35 U.S.C. Section 103(a) as being unpatentable over Fuchs et al. (U.S. Patent Application Publication No. 2002/0044988) in view of Hallfrisch et al. ("Diets Containing Soluble Oat Extracts Improve Glucose and Insulin Responses of Moderately Hypercholesterolemic Men and Women," Hallfrisch et al., *The American Journal of Clinical Nutrition*, 1995, Vol. 61, pages 379-384) and Alltech (believed to be a web page entitled "Alltech to Exhibit Range of Natural Products At Space 2002" and bearing a date of August 7, 2002, but printed on a date which is illegible). Claims 2, 3, and 5-9 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Fuchs et al. in view of Hallfrisch et al., Alltech, and Boocock et al. (U.S. Patent No. 4,053,492). Claims 29-32 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Fuchs et al. in view of Hallfrisch et al., Alltech, and Bengmark et al. ("Gastrointestinal Surface Protection and Mucosa Reconditioning," Bengmark et al., *Journal of Parenteral and Enteral Nutrition*, September, 1995, Vol. 19, No. 5, pages 410-415).

Amendments to the Claims

Applicants have amended Claims 1-5, and 7-9 to change the phrase "polar lipid supplement" to "polar lipid" in the claims, which change was discussed with the Examiner in related U.S. Patent Application No. 10/435,367.

Claim 1 has been amended to include the limitation that the soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans, which is supported by paragraph 0072 of the specification and Claim 11 as originally filed.

Claim 1 has additionally been amended to include the limitation that the polar lipid, the soluble fiber source, the nutrice, and the protein concentrate supplement are present in the dietary supplement in respective amounts sufficient to enhance growth and/or strengthen the immune system of equine foals, which is supported throughout the specification in the description of each of the cited elements (particularly in paragraphs 0062-0072).

Claim 11 has been cancelled in view of the inclusion in Claim 1 of the limitation that the soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans.

Section 103(a) Rejections

With regard to the Section 103(a) rejections, Paragraph [0051] of the Fuchs et al. reference states that the supplement of that reference is to have a "soluble, prebiotic fiber" with the requirement that "[t]he fiber selected **should not induce satiety.**" Emphasis added. This teaches directly away from Applicants claim limitation that the "soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans," since each of these ingredients are known to induce satiety.

See, for example, Optimising Cardio Health With Oat Beta-Glucans, Gregory Stephens, *Functional Ingredients Magazine*, April 1, 2005, <http://www.functionalingredientsmag.com/article/Ingredient-Focus/optimising-cardio-health-with-oat-beta-glucans.aspx>, copy enclosed herewith, which states that "[i]t is well known that oats and, particularly, the soluble fibre in oats (beta-glucan) **induce high levels of satiety**." Emphasis added. Stephens goes on to state that "beta-glucan from oats **and other grain sources** are highly water soluble and thus build substantial viscosity in the gut." Emphasis added. Thus, it is apparent that the Fuchs et al. reference, which requires that "[t]he fiber selected should not induce satiety," teaches directly away from the claims.

See also Peter M. Schkoda, Barley Beta Glucans Application in Obesity, supplement to AgroFOOD industry hi-tech, September/October 2008, Vol. 19, No. 5, copy enclosed herewith, which states that "barley beta glucans **are an effective way of enhancing satiety** and reducing energy. . . . Studies have demonstrated that **incorporating barley beta glucans in food formulations induces satiety**. . ." Emphasis added. Again, it is apparent that the Fuchs et al. reference, which requires that "[t]he fiber selected should not induce satiety," teaches directly away from the claims.

Also see Soy Protein Applications, *Protein Foods and Nutrition Development Association of India*, March, 2005, Pages 9-11, copy enclosed herewith, which states that "demand for products that offer satiety benefits and a low glycemic index is growing. In

this regard, **soy protein fits the bill because it's naturally satiating** and offers a low glycemic index." Emphasis added. Further, see Ishi Khosia, Soybean – the Golden Nugget, *Indian Express*, April 22, 2006, <http://www.indianexpress.com/news/soybeanthe-golden-nugget/2915/>, which states that "[s]oybean has **an exceptionally high satiety value**." Emphasis added. Thus, once again, it is apparent that the Fuchs et al. reference, which requires that "[t]he fiber selected should not induce satiety," teaches directly away from the claims.

Finally, Applicants have amended the claims to state that the ingredients of the dietary supplement are present in respective ranges sufficient to treat digestive system and digestive tract ulcers in horses, which, like similar language included in related U.S. Patent Application No. 10/435,367, serves to further distinguish the claimed supplement from the compositions disclosed in the applied prior art. As such, Applicants believe that the claims of the present patent application are allowable as being distinguished from the cited prior art.

Conclusion

Claim 1-10, 12-17, 19-22, and 24-38 remain pending. Reconsideration of the claimed subject matter is respectfully requested, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application can

be so expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY /William F. Smith/
William F. Smith
Registration No. 58,346

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891

Telephone: (215) 568-3100
Facsimile: (215) 568-3439